

ID: CCA-411043-09

Number: **200924044**

Release Date: 6/12/2009

Office:

UILC: 64.35.00-00

From:

Sent: Wednesday, April 1, 2009 10:43 AM

To:

Cc:

Subject: Lien Question

Whether the NFTLs attach to the LLC interest depends on who had rights in the LLC as of the time the liens arose (the time of assessment). This is determined under state law. *Aquilino v. United States*, 363 U.S. 509, 80 S. Ct. 1277 (1960). It appears that under governing state law, that of Kentucky, an LLC member ceases to lose his membership in the LLC as of the time of death. Ky. Rev. Stat. Ann. section 275.250(1)(f). Therefore, as of the time of death (and, accordingly, as of the time of the assessment), the decedent had no interest in the LLC to which the FTLs could attach. See Rev. Rul. 54-154 (once taxpayer's interest in property terminates, federal tax lien's attachment to that interest also terminates). Therefore, I would think that the discharge request is unnecessary.

I spoke to _____ about this while you were out. She told me that, under the LLC's operating agreement, the decedent (or his estate) is entitled to compensation equaling the fair market value, as of the time of death, of his former interest. I'm not sure whether the FTL would attach to this amount -- my guess is that the amount would go into the estate, since it is the estate, and not the taxpayer, that has/had an interest in the amount (since the interest, in contrast to the interest in the LLC, did not arise until the taxpayer's death). I'm not sure why the IRM was changed, but based on my research, I would think that it is the current version that is correct. While the lien will not usually attach to property already in the decedent's estate, it may if state law permits. I'm not clear from your e-mail how this would play out under Kentucky law.

I hope this is helpful. If you'd like to discuss this, feel free to e-mail or call me.